

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORKMUFG UNION BANK, N.A. (F/K/A UNION BANK,  
N.A.),

Plaintiff,

*-against-*AXOS BANK (F/K/A BANK OF INTERNET USA),  
EPIQ SYSTEMS, INC., and SELLER SUB, LLC,  
Defendants.

Index No.

**SUMMONS**

Date Purchased:

To the above-referenced Defendants:

Axos Bank (f/k/a Bank of Internet USA)  
4350 La Jolla Village Drive, Suite 140  
San Diego, California 92122  
Attn: Jill Bauer, Legal DepartmentSeller Sub, LLC  
9205 West Russell Road, Suite 400  
Las Vegas, Nevada 89148  
Attn: Jill Bauer, EVP Trustee and Fiduciary  
Services Legal DepartmentEpiq Systems, Inc.  
501 Kansas Avenue  
Kansas City, Kansas 66105  
Attn: Legal Department

**YOU ARE HEREBY SUMMONED** to answer the Verified Complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this Summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff MUFG Union Bank, N.A. (f/k/a Union Bank, N.A.), designates New York County as the place of trial.

Venue is proper in this County under CPLR § 501 because, under the contract at issue in this action, the Parties expressly agreed that actions relating to or arising out of the contract, or any transactions contemplated thereby, be commenced in a court located in the City of New York, and waived any objections or defenses (a) that the present action has been brought in an inconvenient forum, or (b) that the venue of this action is improper.

DATED: New York, NY  
April 26, 2019

PILLSBURY WINTHROP SHAW PITTMAN LLP

By: 

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N.A. (f/k/a Union Bank, N.A.)*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

MUFG UNION BANK, N.A. (F/K/A  
UNION BANK, N.A.),

*Plaintiff,*

- against -

AXOS BANK (F/K/A BANK OF  
INTERNET USA), EPIQ SYSTEMS,  
INC., and SELLER SUB, LLC,

*Defendants.*

Index No. \_\_\_\_\_/2019

**VERIFIED COMPLAINT**

Plaintiff, MUFG Union Bank, N.A. (f/k/a Union Bank, N.A.) (“Union Bank” or “Plaintiff”), by and through undersigned counsel, brings this Complaint against Epiq Systems, Inc. (“Epiq”) for breach of contract and breach of the implied covenant of good faith and fair dealing; against Axos Bank (f/k/a Bank of Internet USA) (“Axos Bank”) for tortious interference with contractual relations; and against Axos Bank, Epiq, and Seller Sub, LLC (“Seller Sub,” and together with Epiq and Axos Bank, “Defendants”) for declaratory judgment and temporary and permanent injunctive relief, and alleges as follows:

**NATURE OF THE ACTION**

1. Union Bank has a substantial business providing deposit services to chapter 7 bankruptcy trustees. Prior to Axos Bank’s and Epiq’s wrongful conduct, Union Bank held approximately \$500 million in trustee deposits. Axos Bank, with Epiq’s participation, hatched a scheme to steal that business. To accomplish its goal, Axos Bank intentionally procured multiple breaches by Epiq of its contract with Union Bank.

2. Chapter 7 trustee deposit services must be offered in conjunction with a bankruptcy trustee software provider. Union Bank, in order to provide its deposit services to chapter 7 trustees, therefore had a contract with Epiq, a software provider. That contract is referred to as the Joint Services Agreement (the “JSA”).<sup>1</sup> It provided that Epiq and Union Bank were “to jointly promote [each other’s] products and services to bankruptcy and insolvency professionals and other fiduciary types as may be agreed upon by the parties on a case-by-case basis.” The JSA contained certain restrictions that prevented Union Bank from using or negotiating to use software other than Epiq’s. Union Bank agreed to these restrictions since Epiq could not take bank deposits and thus could not compete with Union Bank.

3. Axos Bank knew that if it were to acquire Epiq’s trustee software operations, Axos Bank could then replace Union Bank as the provider of deposit services for the chapter 7 trustees and thereby capture Union Bank’s trustee business; something Epiq could not have done on its own. Axos Bank recognized that because of the restrictions on Union Bank in the JSA, it could motivate Union Bank’s trustee customers to move their deposits to Axos Bank by offering them various inducements that Union Bank would be unable to match.

4. Axos Bank’s problem was that Epiq’s agreement with Union Bank does not allow the contract to be assigned to any counterparty without Union Bank’s permission. Axos Bank thought it had a solution: The Epiq trustee software business could be placed into a special purpose subsidiary that Epiq wholly-owned, called Seller Sub, and then Axos Bank could buy the subsidiary from Epiq and, with it, the JSA.

5. But, Axos Bank’s scheme violates both the terms of the JSA and its intent, which was to jointly promote Union Bank’s and Epiq’s products and service. In particular, among other

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<sup>1</sup> Due to confidentiality restrictions in the JSA, the contract is not attached to this Complaint, but is quoted from herein, as necessary.

terms of the JSA, the scheme violated an amendment that Epiq entered into a mere five days before Axos Bank bought Epiq's trustee software unit. That amendment explicitly requires that Epiq itself provide the software services to Union Bank and prohibits any and all assignments (including assignments pursuant to a sale) without Union Bank's consent. Axos Bank tortiously interfered with Union Bank's contract with Epiq by inducing Epiq to breach the JSA by assigning it to Axos Bank.

### **PARTIES**

6. Plaintiff Union Bank is a national bank with its home office located in the City of San Francisco, State of California.

7. Upon information and belief, Defendant Axos Bank is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business in the State of California.

8. Upon information and belief, Defendant Seller Sub is a Delaware limited liability company, wholly owned and operated by Axos Bank. Seller Sub was originally formed by Epiq specifically to hold Epiq's chapter 7 trustee software business and be sold to Axos Bank.

9. Upon information and belief, Defendant Epiq is a corporation organized and existing under the laws of the State of Missouri, having its principal place of business at 501 Kansas Ave, Kansas City, Kansas 66105.

### **JURISDICTION AND VENUE**

10. The Court has personal jurisdiction over the Parties under Civil Practice Law and Rules ("CPLR") § 301 and General Obligations Law §§ 5-1401 and 5-1402 because (i) both the value of the JSA and the amount in controversy in this action substantially exceed \$1 million and,

(ii) in the JSA, the parties (including Axos Bank, which purportedly has acquired Epiq's rights, duties, and obligations under the JSA and has asserted that it has rights under it):

- (a) expressly agreed that the JSA is "governed by and construed in accordance with the laws of the state of New York, without reference to its conflict of law provisions" (JSA § 24); and
- (b) "irrevocably and unconditionally consent[ed] to and submit[ted] to the exclusive jurisdiction of the courts of the State of New York and of the United States of America located in the City of New York, for any actions, suits or proceedings arising out of or relating to [the JSA] and the transactions contemplated thereby.

11. Venue is proper in this Court under CPLR § 501 because, under the JSA, the parties (including Axos Bank, which has asserted that its rights are under the JSA):

- (a) irrevocably and unconditionally waived and agreed not to plead or claim in any such court any objection to venue; and
- (b) irrevocably and unconditionally waived and agreed not to plead or claim in any such court that such court is an inconvenient forum.

### **FACTS**

#### **A. Union Bank and Epiq Enter into the Joint Services Agreement, Including an Anti-Assignment Provision**

12. On or about September 27, 2012, Union Bank and Epiq entered into the JSA, effective as of October 1, 2012.

13. As noted, the stated purpose of the JSA was "to jointly promote [Union Bank's and Epiq's] products and services to bankruptcy and insolvency professionals and also other fiduciary types as may be agreed upon by the parties on a case-by-case basis." (JSA § 1.A.)

14. Under the JSA, the parties agreed that the "Agreement and the rights, privileges, duties and obligations of the parties hereto may not be assigned or delegated by any party without the prior written consent of the other party." (JSA § 23) (emphasis added).

15. Prior to the Fifth Amendment, there were two limited exceptions to this anti-assignment provision:

- “for the assignment by any party of its rights and privileges hereunder to a person or entity controlling, controlled by or under common control with such party (it being understood that no such assignment shall relieve the assigning party of its duties or obligations hereunder, which must be explicitly guaranteed by the assigning party),” or
- “the assignment and delegation by any party of its rights, privileges, duties and obligations hereunder to any person into or with which the assigning party shall merge or consolidate or to which the assigning party shall sell all or substantially all of its assets, provided that the assignee shall formally agree in writing to assume all the rights and obligations of the assigning party created hereby.”

(JSA § 23) (emphasis added).

16. In consideration of these anti-assignment provisions, Union Bank, for its part, agreed in the JSA to a long exclusivity period with Epiq until October 2015 (under which even negotiations with Epiq’s competitors were prohibited), and somewhat relaxed exclusivity restrictions thereafter until the termination of the JSA:

“Bank represents that it has not, and will not from and after the execution of this Agreement by both parties until the third (3<sup>rd</sup>) anniversary of the Effective Date of this Agreement (regardless of whether this Agreement is terminated prior to the third (3<sup>rd</sup>) anniversary of the Effective Date), negotiate, execute, perform under or announce an agreement with any party other than Epiq to provide to End-User Clients the same or similar cooperative products and services offered by the parties under this Agreement. Bank further represents that from and after the third (3<sup>rd</sup>) anniversary of the Effective Date of this Agreement, Bank shall not directly or indirectly perform under or announce an agreement with any party other than Epiq to provide to End-User Clients the same or similar cooperative products and services offered by the parties under this Agreement prior to the Effective Date of Termination of this Agreement.”

(JSA § 5.B) (emphasis added).

17. Union Bank also agreed, on behalf of itself and its subsidiaries, “not to develop or have developed any software for use by End-User Clients or Joint Clients that are competitive with any Epiq Software provided by Epiq to End-User Clients, including, without limitation, any bankruptcy case management software marketed to and used by End-User Clients.” (JSA § 5.C.)

**B. Epiq and Union Bank Enter into a Fifth Amendment to the JSA, Including an Even More Stringent Anti-Assignment Provision**

18. Following execution of the original JSA, the parties entered into a total of five amendments to that agreement.

19. On or about March 28, 2018, Union Bank and Epiq entered into the fifth amendment to the JSA (the “Fifth Amendment”), which was effective as of March 29, 2018.

20. The Fifth Amendment added further restrictions on assignments, which apply specifically to Epiq—and make no exception for assignments to affiliates or assignments via merger, acquisition, other change in control, or otherwise.

21. Specifically, the Fifth Amendment provides that: “Epiq shall perform the obligations described in this Agreement and in the Statement(s) of Work, if any, itself. Epiq may not assign, delegate or subcontract this Agreement or any of its rights, duties or obligations under this Agreement without Bank’s prior express written consent. . . .” (Fifth Amendment § 7, new JSA § 38) (emphasis added).

22. In addition, under the Fifth Amendment, “[a]ny purported assignment or delegation not consented to by Bank shall be void at Bank’s option and shall constitute a material breach of this Agreement. Epiq acknowledges that Bank has entered this Agreement in reliance on Epiq’s ability and agreement to personally perform Epiq’s obligations hereunder. . . .” *Id.* (emphasis added).



23. In consideration of these and other additional provisions in the Fifth Amendment, Union Bank, among other things, agreed to new provisions regarding Force Majeure and Termination for Cause that were to Epiq's benefit.

24. At no time has Union Bank ever provided express written consent to any assignment, delegation, or subcontracting by Epiq of its rights, duties, or obligations under the original JSA or the JSA as amended.

**C. Epiq Breached the JSA and Fifth Amendment by Assigning Its Rights and Obligations to Seller Sub LLC without Union Bank's Prior Express Written Consent**

25. Upon information and belief, Seller Sub, a wholly-owned subsidiary of Epiq, was formed on March 27, 2018, one day before Union Bank and Epiq executed the Fifth Amendment.

26. On or about April 3, 2018—less than a week after the Fifth Amendment took effect—Epiq transferred all of its rights, duties, and obligations under the JSA to Seller Sub (the “Transfer”).

27. It is apparent that the purpose of the Transfer was to allow Union Bank's business to be acquired by Axos Bank, and thereby destroy Union Bank's ability to receive the fruits of the JSA.

28. The Transfer violated both the JSA before any amendments, and the Fifth Amendment because Union Bank was never asked for, and did not give, its prior express written consent to the Transfer.

29. Upon information and belief, on April 4, 2018—the day after the Transfer—Seller Sub was acquired by Axos Bank, and Seller Sub assigned its purported interest in the Agreement to Axos Bank (such transactions collectively, the “Acquisition”).

30. As a result of the Transfer and Acquisition, Epiq has not itself been performing its duties under the JSA since April 2018. Instead Seller Sub and/or Axos Bank have been performing those duties.

31. In addition, as a result of the Acquisition, Epiq is not able to guarantee Seller Sub's performance of Epiq's duties and obligations under the JSA.

32. Since the Acquisition, Axos Bank has used its position as the chapter 7 trustee banking software provider for Union Bank's customers to move a substantial amount of the chapter 7 trustee banking business that had been Union Bank's to Axos Bank.

33. For example, upon information and belief, Axos Bank has been contacting these Union Bank customers and advising them to move their deposits to Axos Bank because Union Bank's contract with Epiq will expire at year end and will not be renewed.

34. Such disclosure violates Section 7.C.4 of the JSA, which prohibits the parties from "communicat[ing] with Joint Clients regarding the termination of this Agreement no more than six months prior . . . to the Effective Date of Termination, in a fashion that is commercially reasonable and acceptable to both parties." Given that the purported Effective Date of Termination of the JSA is January 1, 2020, Epiq, Axos Bank, and Seller Sub are forbidden until July 1, 2019, to communicate to Joint Clients that the JSA is terminated.

35. In addition, knowing that the JSA requires Union Bank to charge most of its chapter 7 trustee customers fees, Axos Bank has been contacting these very same customers and offering them trustee deposit services without any fees.

36. When Union Bank asked for permission to reduce its fees, however, Axos Bank, which owned Epiq's chapter 7 trustee banking software business, refused to grant such permission.

Upon information and belief, Axos Bank did this in order to ensure that chapter 7 trustees are financially incentivized to move their deposits from Union Bank to Axos Bank.

37. This refusal to agree to a reduction in Union Bank's fees was calculated to advantage Axos Bank to Union Bank's detriment. This conduct is contrary to Epiq's obligation under the JSA to promote Union Bank's products.

38. As a result of Axos Bank's campaign of solicitation in coordination with Epiq, (i) approximately forty of Union Bank's chapter 7 trustee customers have moved \$108.9 million in deposits to Axos Bank as of the date of this complaint; (ii) approximately twenty of such customers have moved \$40.6 million in deposits to other banks due to software changes; (iii) an additional twelve customers have notified Union Bank that they plan to move \$13.5 million in deposits to Axos Bank prior to the end of June 2019; and (iv) an additional two customers have notified Union Bank that they plan to move \$3.1 million in deposits to other banks prior to the end of June 2019 due to software changes. Union Bank has thus lost approximately \$150 million in deposits and will shortly lose an additional approximately \$17 million in deposits as a result of Axos Bank's and Epiq's actions. If Axos Bank is allowed to continue its aggressive solicitation of trustees to Axos Bank, Union Bank will lose an additional approximately \$325 million in chapter 7 deposits.

**D. Epiq Notifies Union Bank of the Transfer and Acquisition**

39. On April 4, 2018, Epiq notified Union Bank by e-mail and telephone that Epiq's Trustee and Fiduciary Services business had been acquired by a "subsidiary" of Bank of Internet (n/k/a Axos Bank). None of Epiq's communications to Union Bank that day referenced an entity called "Seller Sub, LLC." Union Bank, however, was assured by Epiq representative Jill Bauer that it would still be "business as usual." It soon learned that this was not true.

40. On Friday, June 8, 2018, just over two months after the Transfer and Acquisition, Seller Sub (not Epiq) sent a letter to Union Bank (the “Transfer Letter”),<sup>2</sup> stating: “On or about April 3, 2018, Epiq transferred the Agreement to its wholly owned subsidiary ‘Seller Sub, LLC,’ a Delaware limited liability company, which continues to hold Epiq’s interest in the Agreement.”

41. Such “transfer” was, in both form and substance, the very manner of assignment and delegation expressly prohibited under the JSA, as amended by the Fifth Amendment.

42. In the Transfer Letter, Seller Sub further notified Union Bank that it was terminating the JSA, and that a contractually-required “Disengagement Period” would commence.

43. Union Bank did not receive the Transfer Letter on June 8, 2018. Union Bank’s Corporate Executive under the JSA, Kimberly Siebler, however, did receive a telephone call that day from Jill Bauer (a representative of both Seller Sub and Axos Bank, and formerly a representative of Epiq), during which Ms. Bauer informed Ms. Siebler that the JSA was being terminated.

44. Union Bank first received the Transfer Letter on Monday, June 11, 2018. Prior to that date, Union Bank had never heard of Seller Sub.

**E. Union Bank Notifies Epiq of Its Breaches of the JSA, but Epiq Fails to Cure**

45. Upon learning of the Transfer and Acquisition, Union Bank engaged in lengthy discussions with representatives of Epiq, Seller Sub, and Axos Bank to obtain more information about the Transfer and Acquisition, and to share Union Bank’s concerns about the acquisition of Epiq’s business by Axos Bank. That process continued into early 2019.

46. Under Section 31 of the JSA, “[n]o . . . waiver of this Agreement will be implied from any conduct of the parties.”

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<sup>2</sup> Due to confidentiality restrictions in the JSA, the Transfer Letter is not attached to this Complaint, but is quoted from herein, as necessary.

47. On February 21, 2019, after negotiations with Axos Bank failed, Union Bank sent a notice of breach (pursuant to Section 25 of the JSA) to Epiq, Seller Sub, and Axos Bank (the “Breach Notice”).<sup>3</sup>

48. In the Breach Notice, Union Bank declared that the Transfer and Acquisition constitute material breaches by Epiq of the JSA and Fifth Amendment, as well as a violation of the covenant of good faith and fair dealing implied in every contract under New York law.

49. Union Bank further notified Epiq, Seller Sub, and Axos Bank in the Breach Notice that the Transfer and Acquisition constitute tortious interference by Axos Bank with the contractual relations between Union Bank and Epiq, as memorialized in the JSA, as amended.

50. In light of these material breaches and tortious acts, Union Bank declared the existence of a Dispute between Union Bank and Epiq pursuant to Section 25 of the JSA and referred the Dispute to the parties’ Corporate Executives for resolution.

51. By agreement of the parties, a meeting of the Corporate Executives to resolve the Dispute was scheduled for Friday, April 12, 2019 (the “April 12<sup>th</sup> Meeting”).

52. Though the Corporate Executive for Union Bank appeared for the April 12<sup>th</sup> Meeting, no Corporate Executive for Epiq appeared.

53. Union Bank has therefore complied with all conditions precedent under the JSA for the filing of this suit.

**F. Axos Bank Ramps Up Its Efforts to Steal Union Bank’s Customers**

54. Upon information and belief, over the past week (if not longer), Axos Bank has been contacting Union Bank’s chapter 7 trustee clients and notifying them that they have 30 days to move their deposits from Union Bank to Axos Bank.

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<sup>3</sup> Due to confidentiality restrictions in the JSA, the Breach Notice is not attached to this Complaint, but is quoted from herein, as necessary.

55. In addition, upon information and belief, in order to induce Union Bank's chapter 7 trustee customers to move their deposits to Axos Bank, Axos Bank has been misinforming these customers that Union Bank's relationship manager is going to retire and that the customers will therefore not receive the same support from Union Bank they have previously received.

56. Upon information and belief, at least twelve of the customers contacted by Axos Bank have said they will move their business from Union Bank to Axos Bank, totaling \$13.5 million in deposits. This is in addition to trustees who have already moved their deposits to Axos Bank.

57. Upon information and belief, as of the date of this Complaint, Axos Bank is continuing to pressure Union Bank's chapter 7 trustee clients to move their deposits from Union Bank to Axos Bank.

58. In addition, upon information and belief, there are other banks similarly situated to Union Bank, whose chapter 7 trustee customers Axos Bank is actively trying to divert for itself. Union Bank understands that at least one of those banks, which does not have an exclusivity provision in its contract with Epiq, has contracted with a different trustee software provider in an effort to salvage its business.

59. Union Bank, as per the terms of the JSA, has not had any negotiations with alternative software providers, let alone announced or performed under an agreement with any alternative software provider, but has concluded that it must do so immediately if it is going to salvage any of its chapter 7 trustee banking business.

**AS AND FOR A FIRST CAUSE OF ACTION**

**(Breach of Contract)  
(Against Epiq)**

60. Plaintiff incorporates by reference paragraphs 1 through 59 as if fully alleged

herein.

61. The JSA, as amended up through and including the Fifth Amendment, constitutes a binding and valid agreement by and among Union Bank and Epiq.

62. Union Bank has performed all of its obligations under the JSA, as amended.

63. The Transfer constitutes an assignment and delegation of Epiq's rights, duties, and obligations under the JSA, in contravention of the anti-assignment provisions of the JSA, as amended by the Fifth Amendment.

64. Epiq has willfully breached the JSA in the manner described herein, including by, among other things, conducting the Transfer and enabling the Acquisition.

65. As a direct result of Epiq's breaches of the JSA, Union Bank has suffered many millions of dollars in damages, the exact amount to be specifically determined at trial, plus prejudgment interest.

**AS AND FOR A SECOND CAUSE OF ACTION**

**(Breach of Duty of Good Faith and Fair Dealing)  
(Against Epiq)**

66. Plaintiff incorporates by reference paragraphs 1 through 65 as if fully alleged herein.

67. Under the original JSA, Epiq was prohibited from assigning its rights, obligations, or duties under the JSA to a third party, without Union Bank's prior written express consent, though (in the JSA, prior to execution of the Fifth Amendment) there was an exception for assignments to wholly-owned subsidiaries or affiliates under common control.

68. In addition, under the original JSA, Epiq was in all circumstances required to guarantee performance to Union Bank, even in the event of an assignment by Epiq to a wholly-owned subsidiary or affiliate under common control.

69. Though the Transfer was an assignment by Epiq to Seller Sub (a wholly-owned subsidiary of Epiq, and not a third party), it—in conjunction with the Acquisition—accomplished the same result as if Epiq would have formally and directly assigned its rights to Axos Bank: it deprived Union Bank of performance by the party with which it contracted.

70. Accordingly, even if the Transfer did not constitute a formal breach of the JSA, it achieved the same result, and prevented Union Bank from receiving the fruits of the contract.

71. Epiq has thus violated the covenant of good faith and fair dealing implied in the JSA under New York law. Due to this violation Union Bank has suffered many millions of dollars in damages, the exact amount to be specifically determined at trial, plus prejudgment interest.

**AS AND FOR A THIRD CAUSE OF ACTION**

**(Tortious Interference with Contractual Relations)  
(Against Axos Bank)**

72. Plaintiff incorporates by reference paragraphs 1 through 71 as if fully alleged herein.

73. The JSA, as amended, is a valid contract between Union Bank and Epiq.

74. On and prior to April 4, 2018, Axos Bank knew that Union Bank and Epiq were parties to the JSA, as amended.

75. Despite this knowledge, Axos Bank and Seller Sub intentionally facilitated the Transfer and Acquisition, and thereby caused Epiq to breach the JSA.

76. Axos Bank and Seller Sub did so without justification, for the purpose of diverting Union Bank's chapter 7 trustee clients to Axos Bank.

77. The limitations on liability set forth in Section 22 of the JSA do not apply to Axos Bank's and Seller Sub's tortious interference with Union Bank's and Epiq's contractual



relationship under the JSA.

78. As a result of Axos Bank's procurement of Epiq's breach, Union Bank has suffered many millions of dollars in damages, the exact amount to be specifically determined at trial, plus prejudgment interest.

**AS AND FOR A FOURTH CAUSE OF ACTION**

**(Declaratory Judgment)  
(Against All Defendants)**

79. Plaintiff incorporates by reference paragraphs 1 through 78 as if fully alleged herein.

80. As set forth herein, an actual controversy exists between Union Bank and Defendants that can be resolved by a declaratory judgment determining the parties' rights and obligations under the JSA and New York law.

81. Union Bank therefore prays for a declaratory judgment declaring (i) the Transfer to constitute a breach of the JSA (as amended by the Fifth Amendment) by Epiq, (ii) the Transfer and Acquisition to be void pursuant to the JSA (as amended by the Fifth Amendment), and (iii) that, as a result of Epiq's breaches of the JSA, Union Bank is itself no longer bound by the JSA, including (but not limited to) the exclusivity and non-compete provisions of Section 5 thereof.

**AS AND FOR A FIFTH CAUSE OF ACTION**

**(Temporary and Permanent Injunction)  
(Against All Defendants)**

82. Plaintiff incorporates by reference paragraphs 1 through 81 as if fully alleged herein.

83. As set forth in paragraphs 25 through 59, Axos Bank procured Epiq's breach of the JSA via the Transfer and Acquisition and has since used its position as purported owner of Seller Sub to steal many of Union Bank's chapter 7 trustee customers from Union Bank.

84. If Axos Bank is permitted to continue these efforts, Union Bank will suffer irreparable harm in the form of the loss of its entire chapter 7 trustee banking business.

85. Union Bank has no adequate remedy at law for such irreparable harm.

86. As none of Defendants' businesses will be materially impaired by the issuance of a preliminary or permanent injunction, the balance of the hardships tips in favor Union Bank.

87. Union Bank requests that the Court temporarily and permanently enjoin Defendants and their respective subsidiaries, affiliates, and agents from instructing, advising, suggesting, or otherwise communicating to Union Bank's chapter 7 trustee banking customers that they move their deposits from Union Bank to Axos Bank.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff Union Bank respectfully requests:

A. Judgment against Epiq on the First Cause of Action for all damages Union Bank has sustained as a result of Epiq's breaches of the JSA, as amended, totaling many millions of dollars, in an amount to be specifically determined at trial, plus prejudgment interest thereon; and/or

B. Judgment against Epiq on the Second Cause of Action for all damages Union Bank has sustained as a result of Epiq's breach of the implied covenant of good faith and fair dealing, totaling many millions of dollars, in an amount to be specifically determined at trial, plus prejudgment interest thereon; and/or

C. Judgment against Axos Bank on the Third Cause of Action for all damages Union Bank has sustained as a result of its tortious interference with Union Bank's contractual relations with Epiq, totaling many millions of dollars, in an amount to be specifically determined at trial, plus prejudgment interest thereon; and

D. Judgment against all Defendants on the Fourth Cause of Action, declaring (i) the Transfer to constitute a breach of the JSA (as amended by the Fifth Amendment) by Epiq, (ii) the Transfer and Acquisition to be void pursuant to the JSA (as amended by the Fifth Amendment), and (iii) that, as a result of Epiq's breaches of the JSA, Union Bank is itself no longer bound by the JSA, including (but not limited to) the exclusivity and non-compete provisions of Section 5 thereof; and

E. Judgment against all Defendants on the Fifth Cause of Action, temporarily and permanently enjoining Defendants and their respective subsidiaries, affiliates, and agents from instructing, advising, suggesting, or otherwise communicating to Union Bank's chapter 7 trustee banking customers that they move their deposits from Union Bank to Axos Bank;

F. Expedited adjudication of this case, given that this dispute involves questions of law related to interpretation of a contract, and does not require substantial discovery (if any); and

G. Any further relief the Court deems necessary or appropriate.

DATED: New York, NY  
April 26, 2019

PILLSBURY WINTHROP SHAW PITTMAN LLP

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*Attorneys for Plaintiff MUFG Union Bank,  
N.A. (f/k/a Union Bank, N.A.)*

VERIFICATION

STATE OF ARIZONA       )  
                                  ) ss.:  
COUNTY OF MARICOPA   )

Kimberly Siebler, being duly sworn, deposes and says:

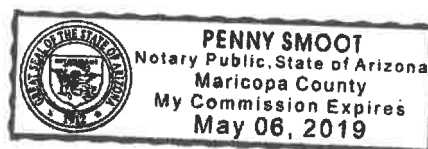
I am a Managing Director of MUFG Union Bank, S.A. (f/k/a Union Bank, N.A.), the plaintiff in the above-captioned action. I have read the foregoing complaint and know the contents thereof; the same is true to my knowledge, except as to matters therein to be stated upon information and belief and, as to those matters, I believe them to be true.



Sworn to me on this 26  
day of April 2019.



Notary Public

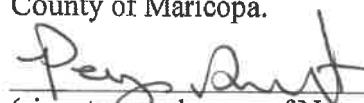


ACKNOWLEDGEMENT

STATE OF ARIZONA       )  
                                  ) ss.:  
COUNTY OF MARICOPA   )

On the 26th day of April in the year 2019 before me, the undersigned, personally appeared Kimberly Siebler, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the State of Arizona,

County of Maricopa.



(signature and name of Notary Public taking acknowledgement)